



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 5068-01
15 January 2002

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 January 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 3 February 2000 at the age of 19. Your record reflects that on 27 July 2000 you submitted a sworn statement requesting discharge due to your homosexuality, which reads, in part, as follows:

I respectfully request a separation from the Navy due to the fact of my homosexuality. I understand the Navy's policy regarding homosexuality, but I feel that I can't serve for the fact that everyday it gets harder and more stressful for me knowing that what I do in life can't be involved with the Navy, due to the Navy's policy. I have been homosexual since I was about 14 years old. At this time, I haven't been harassed by any staff member or at since I have been here, but I have heard people talk bad about homosexual people and their rights.

On 7 August 2000 you were notified of pending administrative separation action by reason of homosexuality. On 24 August 2000

you were separated from the Navy with an uncharacterized entry level separation by reason of homosexual conduct, and were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity. The Board also considered your contentions that you are not a homosexual, and that you lied at the time of your discharge because you needed to go home to help your family. However, the Board concluded these factors and contentions were not sufficient to warrant a change in your reenlistment code or narrative reason for separation. The Board concluded that your sworn statement at the time of your discharge was sufficient to warrant discharge due to homosexuality and the assignment of an RE-4 reenlistment code. Further, such a code is authorized and normally assigned when individuals are separated for that reason. The Board noted your contention that you lied about your homosexuality, but also noted that it is well settled in the law that an individual who procures his separation by fraud should not benefit from the fraud when it is discovered. Given all the circumstances of your case, the Board concluded the assigned reenlistment code was proper and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director